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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1936.

No. 3.

STATE OF MISSOURI, Creditor, Petitioner, vs. JOHN T. ROSS, Trustee, et al., Respondents.	Circuit Court of Appeals, Eighth Circuit. Nos. 10,239 and 10,281.

STATEMENT, BRIEF AND ARGUMENT IN BEHALF OF RESPONDENT, THE CITY OF ST. LOUIS.

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STATEMENT, BRIEF AND ARGUMENT IN BEHALF OF RESPONDENT, THE CITY OF ST. LOUIS.

STATEMENT.

At the time of its adjudication in bankruptcy, the Laessig's Oil Products Company, of which respondent John T. Ross became trustee, was indebted to the State of Missouri for motor vehicle fuel tax in the sum of $8,580.20, and to the City of St. Louis for a similar tax in the sum of $9,026.30. The state tax amounted to 2 cents for each gallon of motor vehicle fuel received for sale and distribution in the state; the city tax amounted to 1 cent per gallon. The trustee, after paying the expenses of administration and preferred wage claims, had on hand $11,867.18. As this amount was less than the total of the

allowed claims of the State and City, the question arose as to whether the State and City should share equally the balance of the estate, or whether, as the State contended, the State should receive the full amount of its claim prior to the payment of the City's claim. The Referee in Bankruptcy allowed both claims on an equal basis, and this ruling was upheld in both the District Court and the Circuit Court of Appeals, Eighth Circuit. The opinion of the Circuit Court of Appeals is reported in 80 Federal (2d) 329. As stated in the brief of petitioner, on page 11:

> "No dispute arose between the claimants or with the trustee as to the amount which should be allowed either the petitioner or respondent City of St. Louis. The whole issue is one of priority of payment."

The Statutes Involved.

The following statutes are involved in this cause:

Section 67d of the Bankruptcy Act:

> "(d) Liens given or accepted in good faith and not in contemplation of or in fraud upon the provisions of this title, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by anything herein" (11 U. S. C. A. 107 [d]).

Section 64 of the Bankruptcy Act:

> "(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality, in the order or priority as set forth in paragraph (b) hereof: *Provided,* That no order shall be made for the payment of a tax assessed against real estate of a bankrupt in excess of the value of the interest of the

bankrupt estate therein as determined by the court. Upon filing the receipts of the proper public officers for such payments the trustee shall be credited with the amounts thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

"(b) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expense of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary and involuntary cases, as the court may allow; (4) where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, in the discretion of the court, the reasonable expenses of such creditors in opposing such composition; (5) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the proceeding, not to exceed $600 to each claimant; (6) taxes payable under paragraph (a) hereof and (7) debts owing to any person who by the laws of the States or the United States is entitled

to priority: *Provided,* That the term 'person' as used in this section shall include corporations, the United States and the several States and Territories of the United States" (11 U. S. C. A. 104).

Section 3152, R. S. Mo. 1929, provides in part as follows:

"Whenever any person indebted to the State of Missouri is insolvent * * *, the debts to the State of Missouri shall be first satisfied, and the priority hereby established shall extend as well to cases in which a debtor not having sufficient property to pay all his debts, makes a voluntary assignment thereof * * *. As to cases in which an act of bankruptcy is committed: Provided that nothing in this article contained shall be construed to interfere with the priority of the United States as secured by law * * *."

Section 3466, U. S. Revised Statutes (31 U. S. C. A. 191):

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

SUMMARY OF ARGUMENT.

I.

(a) Section 3466, U. S. Revised Statutes (31 U. S. C. A. 191), does not establish a lien, but merely provides for the priority of payment of certain debts due the United States.

United States v. Fisher (1804), 2 Cranch. 358, 2 L. Ed. 304;
Beaston v. Farmers Bank of Delaware (1838), 12 Peters 102, 9 L. Ed. 1017.

(b) The construction of section 3466 by the United States Supreme Court was adopted by the State of Missouri along with the statute in 1881, the said Missouri statute now being Section 3152, R. S. Mo. 1929.

General Box Co. v. Missouri Utilities, 331 Mo. 845, 55 S. W. (2d) 442.

(c) As construed by the courts of Missouri, section 3152 does not create a lien.

In re Holland Banking Co., 313 Mo. 307, 281 S. W. 702;
State v. Farmers National Bank, 331 Mo. 685, 56 S. W. (2d) 129.

II.

The general provisions contained in Section 3466 (31 U. S. C. A. 191), and in the similar Section 3152, R. S. Mo. 1929, are superseded by the specific provisions dealing completely with one subject.

Cook County National Bank v. United States, 107 U. S. 445, 2 Sup. Ct. 561, 27 L. Ed. 537;

In re Holland Banking Co., 313 Mo. 307, 281 S. W. 702;
State v. Farmers Exchange Bank, 331 Mo. 685, 56 S. W. (2d) 129.

III.

The Bankruptcy Act takes into consideration the whole range of the indebtedness of a bankrupt and the order of payment to creditors.

Davis v. Pringle, 268 U. S. 315, 45 Sup. Ct. 549, 69 L. Ed. 974;
Guarantee Title & Trust Co. v. Title Guaranty & Surety Co., 224 U. S. 152, 32 Sup. Ct. 457, 56 L. Ed. 706.

IV.

Under Section 64 of the Bankruptcy Act all taxes, whether due to the United States, state, county, district, or municipality, are placed on an equal basis.

New Jersey v. Anderson, 203 U. S. 483, 27 Sup. Ct. 137, 51 L. Ed. 284;
In re A. E. Fountain, Inc., 295 Fed. 873;
In re Wyley, 292 Fed. 900;
In re A. J. Waterman Mfg. Co., 291 Fed. 589;
City of Waco v. Bryan, 127 Fed. 79;
Dallas v. Ryan, 22 A. B. R. (N. S.) 378;
Reese v. United States, 75 Fed. (2d) 9;
In re Inland Dredging Corporation, 61 Fed. (2d) 765;
In re Vidal, 233 Fed. 733;
In re Lewis, 99 Fed. 936;
In re Rouse, Hazard & Co., 91 Fed. 96;
In re Slonka, 122 Fed. 630;
In re Consumers' Coffee Co., 18 A. B. R. 500.

V.

The power of Congress to enact a complete bankruptcy law is not limited by the sovereignty of the states.

Board of Trade v. Johnson, 264 U. S. 1, 44 Sup. Ct. 232, 68 L. Ed. 533.

VI.

The dictum announced by this Court in the case of New Jersey v. Anderson, supra, in 1906, has evoked no clarifying measures by Congress, and has been followed by inferior federal courts.

Newman v. Lynchburg Investment Corporation, 236 U. S. 692, 35 Sup. Ct. 477, 59 L. Ed. 792;
In re A. E. Fountain, Inc., 295 Fed. 873;
In re Wyley, 292 Fed. 900;
In re A. J. Waterman Mfg. Co., 291 Fed. 589.

ARGUMENT.

I.

(a) **Section 3466, U. S. Revised Statutes (31 U. S. C. A. 191), does not establish a lien, but merely provides for the priority of payment of certain debts due the United States.** This section, with slight modifications, has been on the statute books since 1797, and the courts have consistently held that it merely provides for priority of payment in certain cases, and does not establish a lien.

In the early case of **United States v. Fisher**, 2 Cranch. 358, 2 L. Ed. 304, the Court, in part, said:

> "On this subject it is to be remarked that no lien is created by this law (now 3466); no bona fide transfer of property in the ordinary course of business is overreached. It is only a priority in payment, which, under different modifications, is a regulation in common use, and this priority is limited to a particular state of things when the debtor is living, although it takes effect generally when he is dead."

In the later case of **Beaston v. Farmers Bank of Delaware**, 12 Peters 102, 9 L. Ed. 1017, this Court again stated the principle that section 3466 did not establish a lien. In this case the evidence showed that Beaston owed the Elkton Bank $500 on a judgment; that both the United States and the Farmers Bank had obtained a judgment against the Elkton Bank, an insolvent institution, and that the Farmers Bank, in 1830, attached the money in Beaston's hands which he owed to the Elkton Bank, the United States doing likewise in 1831. Beaston paid the United States, contending that under the fifth section of the Act of 1797 (now Section 3466) the United States had

priority to the money. In denying Beaston's contention, this Court, in part, said:

> "From the language employed in this section and the construction given to it from time to time by this Court, these rules are clearly established: First, that no lien is created by the statute • • •."

(b) **The construction of section 3466 by the United States Supreme Court was adopted by the State of Missouri along with the statute in 1881, said Missouri statute now being Section 3152, R. S. Mo. 1929.** The courts of Missouri have followed the general principle that when a state adopts a statute of another state it adopts the construction theretofore given, along with the statute.

In the recent decision of **General Box Co. v. Missouri Utilities**, 331 Mo. 845, l. c. 857, the Missouri Supreme Court stated:

> "The law is well settled that when one state adopts a statute from another state which the courts of that state have construed, then such construction will be held to be adopted along with the statute."

(c) **As construed by the courts of Missouri, section 3152 does not create a lien.** While the courts of Missouri have not directly passed on this point, they have indicated by inference that the statute merely provides for a priority payment. In discussing the state depository law and its effect upon Section 3152, R. S. Mo. 1929, the Supreme Court, in the case of **Holland Banking Co.**, 313 Mo. 307, 281 S. W. 702, stated, in part:

> "We are satisfied that the decided trend of the better reasoned cases is to the effect that where a state has a general statute, **giving priority to the**

debts due the state, and where such state also has a depository law directing the deposits of the state's funds in selected depositories which are required to give full and adequate security equal to or in excess of such deposits as may lawfully be made therein, and where no preference over and above the protection of such security is specifically provided for in such depository law, the state will be deemed to have waived its **priority rights under the general priority statute.**"

The Supreme Court of Missouri, in **State v. Farmers National Bank**, 331 Mo. 689, 56 S. W. (2d) 129, again assumed that section 3152 merely provided a priority when it held that the priority provided by said section was superseded by "a comprehensive and complete scheme • • • for the liquidation and distribution of their assets when insolvent • • •. In that statute we find preferences relative to the state which we think clearly show an intent on the part of the Legislature to waive any priority which otherwise might have been claimed by the state under the prior general statute (3152)."

II.

The general provisions contained in Section 3466, U. S. Revised Statutes (31 U. S. C. A. 191), and in the similar Section 3152, R. S. Mo. 1929, are superseded by the specific provisions dealing completely with one subject. Not only in bankruptcy matters, but in others in which legislatures have passed comprehensive statutes dealing completely with one subject, the general provisions contained in the priority statutes have been superseded by the specific provisions. This Court has held, in **Cook County National Bank v. United States**, 107 U. S. 445, 2 Sup. Ct. 561, 27

L. Ed. 537, that the specific provisions of the National Banking Law supersede the general provisions of section 3466. In that case the Treasury Department held bonds of an insolvent bank to secure its circulating notes, and after selling the bonds and applying the proceeds to redeem the notes, had on hand $30,000 to the bank's credit. The bank, however, owed the Government $20,000 for postal and money order funds deposited with it by the Post Office Department. In holding that the provisions of Section 3466, U. S. Revised Statutes, did not apply, the Court, in part, said (l. c. 539):

> "These provisions (dealing with the liquidation of insolvent national banks) must be deemed, therefore, to withdraw national banks, which have failed, from the claims of insolvent persons out of whose estates demands of the United States are to be paid in preference to the claims of other creditors. The law of 1797, reenacted in the Revised Statutes giving priority to the demands of the United States against insolvents, cannot be applied to demands against those institutions. The provisions of that law and of the National Banking Law, being, as applied to national banks, inconsistent and repugnant, the former law must yield to the latter, and is, to the extent of the repugnancy, superseded by it. The doctrine as to repugnant provisions of different laws is well settled and has often been stated in decisions of this Court. A law embracing the entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of the general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the Legislature, and although as a general rule, the United States are not bound by the provisions of a law in which they are not expressly mentioned, yet, if a particular statute is clearly designed

> to prescribe the only rules which should govern the subject to which it relates, it will repeal any former one as to that subject (citing cases)."

The Supreme Court of Missouri followed this principle in the **Holland Banking case**, 313 Mo. 307, 287 S. W. 302. This case involved the construction of the State Depository Law, the Court holding that the general priority statute (section 3152) was superseded by the depository statute. The Court, in part, said:

> "We are satisfied that the decided trend of the better reasoned cases is to the effect that where a state has a general statute giving priority to the debt due the state, and where such state also has a depository law, * * * the state will be deemed to have waived its priority rights under the general priority statute."

This principle was again followed in the case of **State v. Farmers Exchange Bank**, 331 Mo. 689, 56 S. W. (2d) 129.

III.

The Bankruptcy Act takes into consideration the whole range of the indebtedness of a bankrupt and the order of payment to creditors. Congress has provided in the Bankruptcy Act a comprehensive law dealing completely with matters of bankruptcy. The act deals, in Section 67 (b), with liens, and in Section 64 (104 U. S. C. A.) with priorities, providing seven classes. Had Congress intended to give state tax claims priority over municipal tax claims it seems reasonable it would have so provided.

In **Guarantee Title and Trust Co. v. Title Guaranty and Surety Company**, 224 U. S. 152, 32 Sup. Ct. 457, 56 L. Ed.

76, a surety who was subrogated to the rights of the United States claimed that, by reason of Section 3466, U. S. Revised Statutes, its claim had priority over labor claims. In denying this contention, this Court, in part, said:

> "The Bankruptcy Act of 1867, as we have seen, provided for priority, first, for the payment of expenses, and, second, of 'all debts due to the United States and all taxes and assessments under the laws thereof.' The priority therefore given by the Bankruptcy Act was coextensive with the priority given by the statute of 1797. In other words, to repeat, there was a reaffirmation by the Bankruptcy Act of the statute of 1797, but there is not such affirmation by the Bankruptcy Act of 1898 of that statute, which still exists, as we have said, as Section 3466 of the Revised Statutes. There is a change of provisions, and we come to the question if there is a change of purpose * * *. A different order is prescribed by the Act of 1898 and something more. Labor cla are given priority, and it is provided that the de having priority shall be paid in full. The only exception is 'taxes legally due and owing by the bankrupt to the United States, state, county, district or municipality.' These are civil obligations and not personal conventions, and preference was given to them, but as to debts, we must assume a change of purpose in the change of order, and we cannot say that it was inadvertent. **The act takes into consideration, we think, the whole range of indebtedness of a bankrupt—national, state and individual—and assigns the order of payment.** The policy which dictated it was beneficial and well might induce a postponement of the claims, even of the sovereign, in favor of those who necessarily depend upon their daily labor, and to give such claims priority could in no case seriously affect the sovereign."

In **Davis v. Pringle**, 268 U. S. 315, 45 Sup. Ct. 352, 69 L. Ed. 974, this Court held that the term "person" contained in paragraph 5 (now 7) of Section 64 (b) of the Bankruptcy Act did not include the United States. The Court, however, in leading up to the main question, said:

> "**It may be assumed that the priority must be found, if at all, in the Bankruptcy Act, and in its supposed incorporation of Revised Statute 3466.** That act, as was said in Guarantee Title & Trust Co. v. Title Guaranty & Surety Co., 224 U. S. 152, takes into consideration * * * the whole range of indebtedness of the bankrupt—national, state and individuals—and assigns the order of payment."

IV.

Under Section 64 of the Bankruptcy Act all taxes, whether due to the United States, state, county, district or municipality, are placed on an equal basis.

This Court, in the case of **New Jersey v. Anderson**, 203 U. S. 483, 27 Sup. Ct. 137, 51 L. Ed. 284, said:

> "The requirement of the present law is a wide departure from the Act of 1867, and specifically obliges the trustee to pay all taxes legally due and owing, without distinction between the United States and the state, county, district or municipality."

Although the interpretation of section 64 was not necessary to a determination of the issues in that case, the dictum there established has been followed by the various federal courts of appeals.

In the case of **Reese v. U. S.**, 75 Fed. (2) 9, the Court said:

> "It may be true, as it is contended, that a general

judgment lien, not levied on specific property before the date of insolvency, cannot stand against the priority given the United States, where section 191 (3466) controls, but here the Bankruptcy Act controls, and it is held to have superseded the priority statute in cases of bankruptcy."

This principle is further established in the case of **In re Inland Dredging Corporation**, 61 Fed. (2d) 765, wherein the Court says:

"We do not of course mean that a state statute may control the distribution of bankrupt estates. The priority arises under section 64b (7), which incorporates the state law pro tanto; and the hierarchy of claims—the order of their priority—is fixed by that section. Hence we ignore the provision of section 130 that premiums shall be paid immediately after claims for wages. They take their place in the order prescribed by section 64b (7), regardless of where section 130 puts them."

In the case of **In re A. E. Fountain, Inc.**, 295 Fed. 873, the Referee had ordered "the tax of the United States and the State of New York to be prorated pari passu." In affirming this order the District Court said:

"The taxes under the foregoing provisions of the Bankruptcy Act are not directed to be paid in any precise order, although the United States is mentioned first. As the act carefully provides in subdivision b the order of payment of various items by placing them under separate numerals, it seems reasonable to contend that it would have done this in respect to taxes if Congress had intended any discrimination in priority between taxes due the United States and taxes due the states and **political subdivisions thereof.**"

The case of **In re A. J. Waterman Mfg. Co.**, 291 Fed. 589, involved the question of priority between a claim of the United States for taxes and a claim of the City of Portland for taxes. The Court said:

> "Subsection (a) of Section 64 of the Bankruptcy Act puts all taxes in one class, and in a class prior to all claims enumerated in section (b). I cannot sustain the contention of the United States that the United States has priority in the matter of taxes over the City of Portland. That section is distinct in putting all taxes upon an equality. For the reasons which I have given, I allow the claims for the administration of the estate to have priority over the taxes. I allow, also, the expenses of the common-law assignees in preserving the estate to have priority over the claims for taxes, they being found to be beneficial to the estate. After allowing priority to such claims—namely, for administration for the benefit of creditors and for the services and disbursements of the common-law assignees in preserving the estate—there will remain the sum of $4,468.30 to be divided between the tax claims. I have instructed the Special Master to divide this sum in proportion to the amounts of the claims of the United States, and of the City of Portland, with interest. He had made this division. The allowance for taxes appears in the schedule of amounts allowed, filed with this opinion."

The Court in **In re Wyley**, 202 Fed., l. c. 902, said:

> "Considering the dual nature of our Government, and that neither the Union nor the states may destroy or hinder the other in several functions, and all have an equal need of their revenues, it is concluded that the intent of Congress was that there should be a pro rata payment upon all the taxes claimed in section 64 (a) when the available fund is not sufficient

to pay, in full, the taxes due the United States, having no priority over the others * * *."

Prior to the time the New Jersey v. Anderson case, supra, was handed down, the Circuit Court of Appeals, in **City of Waco v. Bryan**, 127 Fed. 79, said:

> "The present bankruptcy law gives priority for all taxes legally due and owing by the bankrupt to the United States, state, county, district or municipality in advance of the payment of dividends to creditors. In short, it puts taxes due the state, counties and municipalities upon the same footing as taxes due the United States."

The Court, in this case, even without the guidance of the dictum in the later New Jersey case, took the same view, that Congress intended to place the claims of the United States and the states, counties and municipalities upon an equal basis.

In re Slonka, 122 Fed. 630, holds that "no principle of statutory construction is better settled than that which displaces the application of general provisions to a particular subject when there are specific provisions applicable to it in the same act."

In **In the Matter of Lewis**, 99 Fed. 936, the Court says:

> "In other words, although the laws of a state giving priority to certain debts are by section 64b, class 5 (now 64b, class 7), introduced into the scheme of the present Bankruptcy Act, yet such state laws are so introduced only so far as the debts to which they give priority are not expressly dealt with as to priority in the Bankruptcy Act itself. Where both a state law and the Bankruptcy Act give priority to the same class of debts the Bankruptcy Act not only con-

trols the state law in the case of absolute conflict between the two, but by its express regulation of its priorities, excludes the state law altogether."

And, in the case of **In re Consumers Coffee Co.**, 18 A. B. R. 500, the Court said:

"Even if a lien, properly so called, exists under the Pennsylvania statute for rent in arrears at the time when the proceedings in bankruptcy were begun, the statute cannot override the act of Congress. While the priority of the landlord's claim is undoubtedly preserved in clause (b) (5) of section 64, this priority is not over all other claims whatever, but only over those that are not specified in the section as being even higher in right. The order of distributing the assets of a bankrupt having thus been expressly laid down by Congress, that order must be followed by the federal court * * *."

V.

The power of Congress to enact a complete bankruptcy law is not limited by the sovereignty of the states.

In **Board of Trade v. Johnson** (2/18/24), 264 U. S. 1, 44 Sup. Ct. 232, 68 L. Ed. 533, the Court had under consideration the question of whether the membership of a bankrupt in the Chicago Board of Trade was property which passed to the trustee in bankruptcy. The Supreme Court of Illinois had held, in Barclay v. Smith, 107 Ill. 349, that such membership was not property. The Court, speaking through Mr. Chief Justice Taft, in holding that the membership was property, in part, said:

"Congress derives its power to enact a bankrupt law from the Federal Constitution, and the construction of it is a federal question. Of course, where the

bankrupt law deals with property rights which are regulated by the state law the federal courts in bankruptcy will follow the state courts; but when the language of Congress indicates a policy requiring a broader construction of the statute than the state decision would give it, federal courts cannot be concluded by them (citing cases)."

VI.

The dictum announced by this Court in the case of New Jersey v. Anderson, supra, in 1906, has evoked no clarifying measures by Congress, and has been followed by inferior federal courts.

In 1925 this Court, in the case of Davis v. Pringle, supra, decided that the term "person" contained in what is now paragraph 7 of Section 64 (b) of the Bankruptcy Act, did not include the United States, and, in the following year, 1926, Congress amended the Bankruptcy Act by providing, in paragraph 7 of section 64 (b) thereof, that "the term 'person,' as used in this section, shall include corporations, the United States and the several states and territories of the United States." While Congress, within one year after the Pringle case, clarified its intention concerning the meaning of the term "person," it has not since 1906, when the New Jersey v. Anderson case was decided, indicated that the construction of Section 64 of the Bankruptcy Act by this Court varied from that of its intention.

It seems reasonable that, in amending the Bankruptcy Act in 1926, Congress would have amended the act further had it felt the construction of section 64 by this Court in the New Jersey case was not in accordance with the legislative intent.

The decisions of the inferior federal courts in construing statutes, while not binding on this Court, may be given

respectful consideration. In **Newman v. Lynchburg Investment Corporation**, 236 U. S. 692, 35 Sup. Ct. 477, 59 L. Ed. 792, this Court had under consideration the construction of a statute of the District of Columbia relating to publication in condemnation proceedings. This Court upheld the construction of the lower court, saying, in part:

> "The fact that the statute had been so construed in a great number of cases in the district, the list of which has been submitted to us, is important, not only as confirmation of our view, **but as a reason for taking it if we felt more doubt than we do.**"

CONCLUSION.

We believe that the above authorities overwhelmingly hold that the order of distributing the assets of a bankrupt has been expressly laid down by Congress; that the Bankruptcy Act supersedes Section 3152, R. S. Mo. 1929, and provides for the payment of the tax claims of the State of Missouri and the City of St. Louis upon a pro rata basis.

Respectfully submitted,

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